

TRULINCS 78867054 - OKPAPAEKE, CHUKWUEMEKA - Unit: BRO-J-B

FROM: 78867054
TO:
SUBJECT: Title Page
DATE: 06/17/2021 09:40:43 AM

Docket in case # 17 CV/CR 225
As: Defendant's Memorandum in further support of motion to withdraw guilty
Date: 06/ 29 / 2021
plea.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

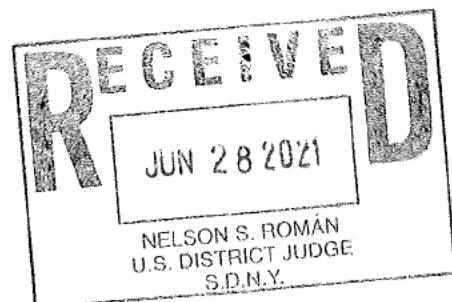
CHUKWUEMEKA OKPARAEKE

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 06/29/2021

S4 17 Cr. 225 (NSR)

OKPARAEKE'S MEMORANDUM OF LAW IN RESPONSE TO THE GOVERNMENT'S OPPOSITION (ECF # 186)

Chukwuemeka Okparaek 78867054
Metropolitan Detention Center
P.O. Box 329002
Brooklyn NY 11232



TRULINCS 78867054 - OKPAPAEKE, CHUKWUEMEKA - Unit: BRO-J-B

FROM: 78867054

TO:

SUBJECT: Response to ECF # 186

DATE: 06/17/2021 06:54:11 PM

PRELIMINARY STATEMENT

Okparaekе respectfully submits this memorandum of law in response to Government's opposition (Dkt. No. 186).

ARGUMENT

I. Applicable Law

Title 5, Section 553 requires "General notice of proposed rule making shall be published in the Federal Register..." before any rule shall be promulgated.

Title 5, Section 706 states, "The reviewing court shall -

- (2) hold unlawful and set aside agency action, findings, and conclusions found to be ----
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,....
 - (B) in excess of statutory jurisdiction, authority or limitations, or short of statutory right;
 - (d) without observance of procedure required by law

II. The Government failed, completely, to address two of three reasons why Okparaekе is legally innocent of Count 1.

In the Government's opposition, the Government's failed to address Okparaekе's argument that the DEA failed to follow the Administrative Procedure Act, specifically Title 5, Section 553(b) requirement that an agency must announce its proposed rule and allow for public comment. It is clear from any review of case law that failing to follow the explicit procedures of the APA is cause for the dismissal of a rule or regulation. The Government also failed to respond to Okparaekе's claim that the DEA's regulation of chemicals besides what was specifically identified by the UN Commission was arbitrary, capricious and an abuse of discretion. In April 2016 the DEA issued a final order placing "Ah-7921" in the Schedule I of the list of Controlled Substances. This order was inclusive of its "isomers, esters, ethers, and salts of isomers, esters, ethers"; it is clear that the UN Commission failed to mention these substances on its scheduling order.

The Government, via its silence on these two points, has conceded these two points; without even addressing whether the Government's claim that the chemical identified by the UN was the same as the one the DEA ultimately scheduled, Okparaekе's claim that the regulation making AH-7921 a Controlled Substance is clearly invalid.

III. The Government's dishonest nitpicking of the scientific record does not save the Regulation

The chemist who created diagrams showing the difference between the chemicals for Okparaekе is Dr. Gregory B. Dudley, Ph. D. Dr. Dudley is the Eberly Family Distinguished Professor and Department Chair of the C. Eugene Bennet Depart of Chemistry at West Virginia University in Morgantown, WV. Dr. Dudley also provided Okparaekе with various research reports about "AH-7921" which showed that there are two different chemical names and at least three different chemical structures for the compound.

For example, one group of scientists says the compound 3,4-dichloro-N-[(1-(dimethylamino)cyclohexyl)methyl] benzamide (AH-7921 as it was intended by the UN Commission) has a chemical structure that is different than the compound identified in the Government's opposition. (See Exh. A Katselou 2015 and compare to Government Exhibit C, Eof # 186-3) This same type of divergence in professional scientific opinion can also be seen in the Government's own brief. As an exhibit, the Government attached a document coauthored by multiple scientists from the European Monitoring Centre for Drugs and Drug Addiction showing a diagram of "AH-7921" (this time written as 3,4-Dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide) which is different in chemical structure than the document prepared by the Government's expert. (See Government Exhibit G, ECF 186-7, page 3).

It was incumbent upon the DEA, pursuant to the powers vested in it pursuant to Title 21, Section 811(d)(1), to schedule one substance and only one substance. Instead the DEA scheduled multiple substances without authority and sowed confusion in the process.

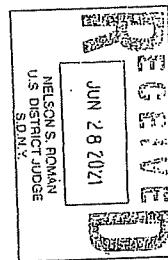
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Therefore, the Court should grant Okparaek's motion and dismiss the underlying the charge from the indictment.

Regards,

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or otherwise, and to another addressee, please
to return the material to him/her, please
which the court has issued, or a return with
the letter has neither been signed or a return with
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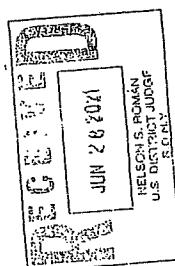
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